

ERVIN COHEN & JESSUP^{LLP}

9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212-2974
mlieb@ecjlaw.com
PH: 310.281.6338
FX: 310.859.2325

May 2, 2022

VIA ECF and E-MAIL

MEMO ENDORSED

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Courtroom 618
New York, N.Y. 10007
E-Mail: Failla_NYSDChambers@nysd.uscourts.gov

Re: **Sanmina Corporation v. Dialight plc: USDC (SDNY) Case no. 1:19-cv-11710**
Dialight plc v. Sanmina Corporation: USDC (SDNY) Case no. 1:19-cv-11712

Dear Judge Failla:

Pursuant to Rule 9 of Your Honor's Individual Rules of Practice in Civil Cases, Sanmina Corporation ("Sanmina") submits this letter in support of its motion for leave to file the following exhibits to Sanmina's compendium of evidence, filed in support of Sanmina's motion for partial summary judgment, under seal:

- Deposition Exhibit 11 – Sanmina's initial response to Dialight's Request for Proposal.
- Deposition Exhibit 18 – Sanmina presentation detailing identities of Sanmina customers.
- Deposition Exhibit 23 – Draft of the parties' confidential Manufacturing Services Agreement ("MSA").
- Deposition Exhibit 24 – Signed MSA.
- Deposition Exhibit 96 – Dialight internal memorandum regarding level of E&O risk.
- Deposition Exhibit 124 – Report prepared by consultant Ernst & Young for Dialight regarding readiness to outsource manufacturing.

May 2, 2022

Page 2

- Deposition Exhibit 128 – Report prepared by consultant Contract Manufacturing Consultants, Inc. for Dialight regarding assessment of Sanmina and Flextronics as potential contract manufacturing partners.
- Deposition Exhibit 132 – Draft of the MSA.
- Deposition Exhibit 134 – Draft of the MSA.
- Deposition Exhibit 136 – Draft of the MSA.
- Deposition Exhibit 139 – Early version of the MSA (Letter of Agreement).
- Deposition Exhibit 141 – Draft of the MSA.
- Deposition Exhibit 143 – Draft of the MSA.
- Deposition Exhibit 168 – Dialight internal draft report regarding outsourcing to Sanmina.
- Deposition Exhibit 172 – Dialight internal audit committee report.
- Deposition Exhibit 175 – Dialight internal report regarding inventory.
- Deposition Exhibit 259 – Early version of the MSA (Letter of Agreement).
- Deposition Exhibit 392 – Draft of the MSA.
- Deposition Exhibit 520 – Dialight internal emails regarding relationship with Sanmina.

“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “It is uncontested, however, that the right to inspect and copy judicial records is not absolute.” *Id.* at 598. For example, courts may restrict access to “sources of business information that might harm a litigant’s competitive standing.” *Id.*

Sanmina and Dialight plc (“Dialight”) have designated the exhibits listed above “Confidential” pursuant to the terms of the Protective Order in effect in this action. Under the terms of the Protective Order (Paragraph 10), documents produced in discovery designated “Confidential” may not be filed in the public record without consent from the designating party. Pursuant to the Protective Order, Sanmina and Dialight met and conferred, agreeing that many exhibits

May 2, 2022

Page 3

previously designated “Confidential” could be filed publicly in support of Sanmina’s motion for partial summary judgment. However, the parties could not agree to the public filing of all the deposition exhibits. While Sanmina takes no position on the propriety of sealing Deposition Exhibits 11, 96, 124, 128, 168, 172, 175, and 520, which were produced and designated by Dialight, in compliance with the Protective Order, Sanmina hereby moves to file them under seal.

Here, the documents contain information that would be of extreme interest to Sanmina’s and Dialight’s competitors – including product pricing and terms regarding the parties’ contract manufacturing agreement. Additionally, this Court previously determined that Deposition Exhibit 24 (the parties’ MSA) warranted filing under seal [Dkt. 29], and many of the deposition exhibits listed above (23, 132, 134, 136, 139, 141, 143, 259, and 392) are drafts of the MSA containing much of the same sensitive information this Court deemed worthy of protection.

Consistent with the protection requested of the foregoing exhibits, Sanmina requests leave to file its Motion and Separate Statement in a form redacted to remove statements taken from the exhibits provisionally filed under seal. Sanmina has thus filed redacted versions of both documents in the public record and unredacted versions of both documents provisionally under seal.

For the foregoing reasons, Sanmina respectfully requests leave to file under seal Deposition Exhibits 11, 18, 23-24, 96, 124, 128, 132, 134, 136, 139, 141, 143, 168, 172, 175, 259, 392, and 520, filed in support of Sanmina’s motion for partial summary judgment.

Respectfully submitted,

/s/

Michael C. Lieb

ERVIN COHEN & JESSUP LLP

Application GRANTED. For the reasons stated above, the Clerk of Court shall maintain docket entries 86, 87, and 88 under seal, viewable only to the parties and Court.

The Clerk of Court is further directed to terminate the motions at docket entry 79 on docket 19 Civ. 11710 (KPF) and docket entry 64 on docket 19 Civ. 11712 (KPF).

Dated: May 3, 2022
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE